



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: Leonard G. Cooke, Director
Department of Criminal Justice Services

FROM: James Towey
Assistant Attorney General

DATE: October 20, 2003

SUBJECT: Authority to adopt regulations pursuant to Code of Virginia § 9.1-150.2 as emergency regulations under § 2.2-4011(A)(i).

In response to a request from the Department of Criminal Justice Services (Department) regarding the adoption of regulations pursuant to Virginia Code § 9.1-150.2, I am of the opinion that these regulations qualify as “emergency regulations” pursuant to Code of Virginia § 2.2-4011(A)(i), given the existence of an imminent threat to public safety.

Section 9.1-150.2 of the Virginia Code, effective July 1, 2003, permits the Criminal Justice Services Board of the Department to adopt regulations establishing compulsory minimum, entry-level, in-service, and advanced training standards for special conservators of the peace appointed pursuant to § 19.2-13. The regulations may include provisions regarding the right to inspect the facilities and programs of persons conducting training to ensure compliance with the law and its regulations, exemption from training of persons having previous employment as law-enforcement officers for a state or the federal government, and partial exemption from training for persons having previous training that meets or exceeds the minimum training standards and has been approved by the Department. Regulations may also be adopted regarding qualifications and examination of qualifications of applicants, registration fees, continued competency and misleading practices, administration of the regulatory system, receipt of complaints concerning the conduct of any person whose activities are monitored by the Board, investigations and disciplinary action, and the revocation, suspension, and refusal to renew a registration, certification, or license.

In establishing the compulsory minimum training standards, the Board is required by § 9.1-150.2 to “ensure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section.” Pursuant to § 19.2-13(B), as of September 15, 2004, all persons seeking appointment as a special conservator of the peace must possess a valid registration issued by the Department. Applicants for registration are permitted to submit applications on or after January 1, 2004. Consequently, in order to ensure the public

safety and welfare against incompetent or unqualified persons, the regulations should be in place by January 1, 2004.

Thus, upon review of the above-referenced provisions of the Code of Virginia as well as the proposed regulations submitted, in light of the imminent threat to public safety raised by the Department without their promulgation, and in accordance with Executive Order 21 (2002), it appears that the Department has the authority to implement the proposed regulations as “emergency regulations” pursuant to § 2.2-4011(A)(i).